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7 Attorneys for Defendants/  
 Counterclaim-Plaintiffs

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

|   |   |
|---|---|
| 10 BOARD OF TRUSTEES OF THE<br>EMPLOYEE PAINTERS' TRUST; BOARD OF<br>TRUSTEES OF THE DISTRICT COUNCIL 16 )  | Case No. 2:24-cv-01023-APG-NJK  |
| 11 NORTHERN CALIFORNIA JOURNEYMAN )<br>AND APPRENTICE TRAINING TRUST )  | <b><u>DEFENDANT WESTERN<br/>NATIONAL MUTUAL INSURANCE<br/>COMPANY'S ANSWER TO<br/>PLAINTIFFS' COMPLAINT</u></b> |
| 12 FUND; BOARD OF TRUSTEES OF THE )<br>SOUTHERN NEVADA PAINTERS AND )<br>DECORATORS AND GLAZIERS LABOR- )<br>MANAGEMENT COOPERATION )                             |   |
| 13 COMMITTEE TRUST; BOARD OF )<br>TRUSTEES OF THE SOUTHERN NEVADA )<br>AND CALIFORNIA GLAZIERS, )<br>FABRICATORS, PAINTERS AND )<br>FLOORCOVERERS PENSION TRUST ) |   |
| 14 FUND; BOARD OF TRUSTEES OF THE )<br>INTERNATIONAL PAINTERS AND )<br>ALLIED TRADES INDUSTRY PENSION )   |   |
| 15 FUND; BOARD OF TRUSTEES OF THE )<br>PAINTERS AND ALLIED TRADES LABOR )<br>MANAGEMENT COOPERATION )   |   |
| 16 INITIATIVE; BOARD OF TRUSTEES OF )<br>THE FINISHING TRADES INSTITUTE; )<br>IUPAT POLITICAL ACTION TOGETHER )   |   |
| 17 FUND; STAR PROGRAM, INC.; SOUTHERN )<br>NEVADA PDCA/FCA INDUSTRY )<br>PROMOTION FUND, )  |   |
| 18 )<br>Plaintiffs, )   |   |
| 19 )<br>vs. )   |   |

1 OLYMPUS CONSTRUCTION LV, INC., a )  
2 Nevada corporation; HOSPITALITY )  
3 RENOVATION SERVICES, LLC, a Nevada )  
4 limited liability company; PHILIP GLEN )  
5 FRIEDBERG, an individual; MARIE JAN )  
6 BOWER, an individual; WESTERN )  
7 NATIONAL MUTUAL INSURANCE )  
8 COMPANY, a Minnesota corporation; GREAT )  
9 AMERICAN INSURANCE COMPANY, an )  
10 Ohio corporation; DOES I-X and ROES I-X, )  
11 Defendants.  
12 \_\_\_\_\_  
13 OLYMPUS CONSTRUCTION LV, INC.; )  
14 HOSPITALITY RENOVATION SERVICES, )  
15 LLC; PHILIP GLEN FRIEDBERG; MARIE )  
16 JAN BOWER,  
17 Counterclaim-Plaintiffs,  
18 vs.  
19 BOARD OF TRUSTEES OF THE )  
20 EMPLOYEE PAINTERS' TRUST; BOARD OF )  
21 TRUSTEES OF THE DISTRICT COUNCIL 16 )  
22 NORTHERN CALIFORNIA JOURNEYMAN )  
23 AND APPRENTICE TRAINING TRUST )  
24 FUND; BOARD OF TRUSTEES OF THE )  
INTERNATIONAL PAINTERS AND )  
DECORATORS AND GLAZIERS LABOR- )  
MANAGEMENT COOPERATION )  
COMMITTEE TRUST; BOARD OF )  
TRUSTEES OF THE SOUTHERN NEVADA )  
AND CALIFORNIA GLAZIERS, )  
FABRICATORS, PAINTERS AND )  
FLOORCOVERERS PENSION TRUST )  
FUND; BOARD OF TRUSTEES OF THE )  
INTERNATIONAL PAINTERS AND )  
ALLIED TRADES INDUSTRY PENSION )  
FUND; BOARD OF TRUSTEES OF THE )  
PAINTERS AND ALLIED TRADES LABOR )  
MANAGEMENT COOPERATION )  
INITIATIVE; BOARD OF TRUSTEES OF )  
THE FINISHING TRADES INSTITUTE; )  
IUPAT POLITICAL ACTION TOGETHER )

1 FUND; STAR PROGRAM, INC.; SOUTHERN )  
2 NEVADA PDCA/FCA INDUSTRY )  
3 PROMOTION FUND, )  
4 Counterclaim-Defendants, )  
5 \_\_\_\_\_ )  
6  
7  
8  
9

10 Defendant WESTERN NATIONAL MUTUAL INSURANCE COMPANY  
11 (“Defendant”), by and through its counsel of record, the law firm of Kamer Zucker Abbott, hereby  
12 answers Plaintiffs’ Complaint by DENYING EACH AND EVERY ALLEGATION in all  
13 paragraphs, except for those paragraphs or portions of paragraphs expressly and specifically  
14 admitted or otherwise referenced *infra*:

15 1. Answering Paragraphs 1, 2, 3, 4, and 7 of the Complaint, Defendant states that those  
16 allegations are procedural statements and/or legal conclusions that require no answer, but to the  
17 extent they contain factual allegations, Defendant denies each and every factual allegation contained  
18 in said paragraphs.

19 2. Answering Paragraphs 5, 6, 9, 10, 11, 12, 13, 14, 15, and 16 of the Complaint,  
20 Defendant states that it is without sufficient knowledge or information to admit or deny the truth of  
21 the allegations and therefore denies each and every allegation contained in said paragraphs.

22 3. Defendant admits the allegations contained in Paragraph 17 of the Complaint.

23 4. Answering Paragraph 18 of the Complaint, Defendant states that it is without  
24 sufficient knowledge or information to admit or deny the truth of the allegations and therefore  
denies each and every allegation contained in said paragraph.

5. Answering Paragraph 21 of the Complaint, Defendant states that those allegations  
are procedural statements and/or legal conclusions that require no answer, but to the extent they  
contain factual allegations, Defendant denies each and every factual allegation contained in said  
paragraph.

1       6. Answering Paragraphs 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of  
2 the Complaint, Defendant states that it is without sufficient knowledge or information to admit or  
3 deny the truth of the allegations and therefore denies each and every allegation contained in said  
4 paragraphs.

5       7. Answering Paragraphs 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49 of the  
6 Complaint, Defendant states that it is without sufficient knowledge or information to admit or deny  
7 the truth of the allegations and therefore denies each and every allegation contained in said  
8 paragraphs.

9       8. Answering Paragraph 50 of the Complaint, Defendant states that those allegations  
10 are procedural statements and/or legal conclusions that require no answer, but to the extent they  
11 contain factual allegations, Defendant denies each and every factual allegation contained in said  
12 paragraph.

13       9. Answering Paragraphs 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, and 66  
14 of the Complaint, Defendant states that it is without sufficient knowledge or information to admit  
15 or deny the truth of the allegations and therefore denies each and every allegation contained in said  
16 paragraphs.

17       10. Answering Paragraph 67 of the Complaint, Defendant states that those allegations  
18 are procedural statements and/or legal conclusions that require no answer, but to the extent they  
19 contain factual allegations, Defendant denies each and every factual allegation contained in said  
20 paragraph.

21       11. Answering Paragraphs 68 and 69 of the Complaint, Defendant states that it is  
22 without sufficient knowledge or information to admit or deny the truth of the allegations and  
23 therefore denies each and every allegation contained in said paragraphs.

24       12. Answering Paragraphs 70 and 71 of the Complaint, Defendant states that those

allegations are procedural statements and/or legal conclusions that require no answer, but to the extent they contain factual allegations, Defendant denies each and every factual allegation contained in said paragraphs.

4           13. Defendant admits only the allegations contained in subparagraphs 72(a), (b), (c), (d),  
5 (e), and (f). Defendant denies any and all other allegations contained in Paragraph 72 of the  
6 Complaint.

7       14. Answering Paragraphs 73, 74, and 75 of the Complaint, Defendant states that it is  
8 without sufficient knowledge or information to admit or deny the truth of the allegations and  
9 therefore denies each and every allegation contained in said paragraphs.

10       15. Answering Paragraphs 77, 91, 100, 106, and 111 of the Complaint, Defendant  
11 repeats and reasserts its foregoing denials and responses to the foregoing paragraphs.

16. Answering Plaintiffs' Prayer for Relief, Defendant asserts that Plaintiffs are not  
entitled to any of the requested monetary damages in any amount at all or to any other kind of relief.

## **DEFENDANTS' AFFIRMATIVE DEFENSES**

15       Defendant reserves the right to rely upon such other affirmative defenses as may be  
16 supported by the facts to be determined by full and complete discovery and voluntarily withdraw  
17 any affirmative defenses.

## **FIRST AFFIRMATIVE DEFENSE**

19 Defendant denies all of Plaintiffs' allegations except as specifically set forth above. For  
20 purposes of this Affirmative Defense only, Defendant alleges that Plaintiffs' Complaint fails to state  
21 claims upon which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the conduct, actions, and/or inactions of Plaintiffs which amount to and constitute an estoppel of the causes of action asserted and any relief sought.

1                   **THIRD AFFIRMATIVE DEFENSE**

2                 Plaintiffs' claims are barred by the doctrine of laches.

3                   **FOURTH AFFIRMATIVE DEFENSE**

4                 Plaintiffs' claims are barred in whole or in part because Plaintiffs' lack standing to assert a  
5 bond claim.

6                   **FIFTH AFFIRMATIVE DEFENSE**

7                 Plaintiffs' claims are barred in whole or in part by the doctrines of accord, satisfaction,  
8 release, and waiver.

9                   **SIXTH AFFIRMATIVE DEFENSE**

10               Plaintiffs' Complaint is barred in whole or in part and injunctive relief is improper because  
11 of Plaintiffs' unclean hands.

12                  **SEVENTH AFFIRMATIVE DEFENSE**

13               Plaintiffs' claims are barred by their own intentional acts and/or omissions.

14                  **EIGHTH AFFIRMATIVE DEFENSE**

15               At all relevant times, Defendant acted in compliance with any contract(s) or agreement(s) to  
16 which it was a party.

17                  **NINTH AFFIRMATIVE DEFENSE**

18               Plaintiffs' authority to audit is derived by written agreement. Any demand to audit an entity  
19 not party to the agreement exceeds the scope of the Plaintiffs' auditing authority and, as such,  
20 Plaintiffs are precluded from pursuing related claims in their Complaint.

21                  **TENTH AFFIRMATIVE DEFENSE**

22               Plaintiffs are not entitled to recovery of any costs, disbursements, attorney's fees, interest,  
23 liquidated damages, or any other penalties available under ERISA § 502(g).

24                  **ELEVENTH AFFIRMATIVE DEFENSE**

1 Plaintiffs' Complaint has been brought without reasonable ground and/or to extort, harass,  
2 or oppress Defendant.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 Plaintiffs' Complaint is barred, in whole or in part, because the injuries and damages claimed  
5 by Plaintiffs resulted from acts and/or omissions of persons other than Defendant or its authorized  
6 agents.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 Any damages sustained by Plaintiffs, if any, were not actually or proximately caused by any  
9 act or omission of Defendant.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 Plaintiffs' Complaint is barred, in whole or in part, because no definite or express terms of  
12 the Trust Agreements or collective bargaining agreements provide for contributions by Defendant  
13 as assessed by Plaintiff.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 Plaintiffs' Complaint is barred, in whole or in part, because no claim may be made against  
16 the bond(s) for any obligation which arose against the principal prior to the date of the execution of  
17 the surety bond(s).

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 Plaintiffs' Complaint is barred, in whole or in part, because o claim may be made against the  
20 bond(s) for any obligation incurred by an entity not named as the principal on the surety bond(s).

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 Plaintiffs' Complaint is barred in whole or in part by the statute of frauds.

23 **EIGHTEENTH AFFIRMATIVE DEFENSE**

24 Plaintiffs' Complain is barred in whole or in part due to the Court's lack of subject matter

1 jurisdiction to hear claims regarding jurisdictional disputes between unions over covered work  
 2 whereas such primary jurisdiction is given to the National Labor Relations Board.

3 **NINETEENTH AFFIRMATIVE DEFENSE**

4 Plaintiffs' Complaint is barred in whole or in part due to a failure of consideration.

5 **TWENTIETH AFFIRMATIVE DEFENSE**

6 Plaintiffs' Complaint is barred in whole or in part because Defendant is entitled to assert all  
 7 the affirmative defenses and claims of Olympus Construction LV, Inc., and Hospitality Renovation  
 8 Services, LLC, and such affirmative defenses negate Plaintiffs' claims.

9 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

10 Plaintiffs' Complaint is barred in whole or in part to the extent Defendant is not an  
 11 employer required to make contributions by not being a signatory to certain agreements or  
 12 documents.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 Plaintiffs' Complaint is barred in whole or in part because, if Olympus Construction LV,  
 15 Inc., and Hospitality Renovation Services, LLC, failed to perform any contractual obligations owed  
 16 to the Plaintiffs, there existed a valid excuse for such performance.

17 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

18 Plaintiffs' Complaint is barred in whole or in part because Olympus Construction LV, Inc.,  
 19 and Hospitality Renovation Services, LLC fulfilled their duties under Nevada and federal law and  
 20 performed, satisfied, and discharged all duties and obligations they may have owed the Plaintiff  
 21 arising out of any and all agreements, representations, or contracts, unless and until prevented from  
 22 further doing so, and thereby extinguished and fully discharged all such duties and obligations, if  
 23 any.

1                   **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2       Plaintiffs' Complaint is barred in whole or in part because Defendant has fully performed  
3 any and all of its obligations as set forth in the bond(s).

4                   **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

5       Plaintiffs' Complaint is barred in whole or in part because Plaintiffs breached their own  
6 contractual obligations to Olympus Construction LV, Inc., and/or Hospitality Renovation Services,  
7 LLC, and, as a result, Defendant is released or discharged from its obligations, if any, to Plaintiffs.

8                   **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

9       Plaintiffs' Complaint is barred in whole or in part because Plaintiffs are not the beneficiaries  
10 under the bond(s) at issue.

11                  **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

12       Plaintiffs' Complaint is barred in whole or in part because Plaintiffs failed to mitigate their  
13 damages, if any.

14                  **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15       Plaintiffs' Complaint is barred in whole or in part because Plaintiffs failed to give notice of  
16 any breach of contract, if any, within a reasonable time after Plaintiffs knew, or should have known,  
17 of said alleged breach of contract.

18                  **THIRTIETH AFFIRMATIVE DEFENSE**

19       Plaintiffs' Complaint is barred in whole or in part because Plaintiffs have failed to satisfy  
20 conditions precedent and/or conditions subsequent required before bringing an action against  
21 Defendant.

22                  **THIRTY-FIRST AFFIRMATIVE DEFENSE**

23       Plaintiffs' Complaint is barred in whole or in part by the applicable statute of limitations.

1                   **THIRTY-SECOND AFFIRMATIVE DEFENSE**

2       Plaintiffs' Complaint is barred in whole or in part because under the doctrines of mutual  
3 mistake, impossibility and/or impracticability.

4                   **THIRTY-THIRD AFFIRMATIVE DEFENSE**

5       Plaintiffs' claims are subject to offset.

6                   **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

7       Plaintiffs' Complaint is barred in whole or in part because Plaintiff cannot satisfy the burden  
8 of proof as to damages.

9                   **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

10      Plaintiffs' Complaint is barred in whole or in part because the audit expenses and attorney's  
11 fees and costs claimed by Plaintiffs were unreasonably incurred.

12                  **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

13      The nature of the claims asserted by Plaintiffs under cover of their Complaint is not specific  
14 and is vague and ambiguous. Because Plaintiffs have not provided Defendant with specific  
15 information regarding their Complaint, Defendant reserves its right to amend its Answer to assert  
16 any applicable, additional, or other defenses constituting an avoidance or affirmative defense at such  
17 time as the nature of Plaintiffs' claims and the facts relating to them are revealed to Defendant.

18      WHEREFORE, Defendant prays this Court for relief as follows:

19      1.     That Plaintiffs' Complaint be dismissed with prejudice;

20      2.     That Defendant be awarded its reasonable attorneys' fees and costs in defense of this  
21 matter; and

22      ///

23      ///

24      ///

3. For such and other further relief as the Court deems reasonable and proper.

## JURY DEMAND

Defendants/Counterclaim-Plaintiffs hereby demand that all triable issues and claims be heard and tried by a jury.

DATED this 3rd day of September, 2024.

Respectfully submitted,

KAMER ZUCKER ABBOTT

By: /s/ R. Todd Creer  
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*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of September, 2024, the undersigned employee of Kamer Zucker Abbott served a copy of the foregoing **DEFENDANT WESTERN NATIONAL MUTUAL INSURANCE COMPANY'S ANSWER TO PLAINTIFFS' COMPLAINT** through the Electronic Case Filing system of the United States District Court, District of Nevada to:

Wesley J. Smith, Esq.  
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By: /s/R. Todd Creer  
An employee of Kamer Zucker Abbott